

MEMORANDUM OF UNDERSTANDING OF CIVIL RIGHTS ISSUES RELATING TO EDUCATION EQUITY

2 This Memorandum of Agreement ("Memorandum") is an agreement made on the date indicated below between Champaign Community Unit School District No. 4 ("District") and certain named Plaintiffs as representatives of the settlement class of present and future African American students ("Plaintiff Class" or "Plaintiffs").¹ This Memorandum summarizes an interim settlement of certain civil rights issues relating to education equity and affecting the African American students of the District.²

In consideration of the mutual agreements and promises summarized herein, the sufficiency of which is hereby acknowledged, the District and Plaintiff Class agree as follows:

1. Education Equity Audit

A. Data compiled by the parties on education equity issues shows the existence of some disparate impacts affecting African American students. The parties agreed that such data should be enhanced by a more comprehensive

¹ The signature page of this Memorandum contains a complete listing of the named Plaintiffs. This Memorandum was negotiated and is executed on behalf of the Plaintiffs by their Legal Counsel, the law firm of Futterman & Howard, Chtd. ("Legal Counsel"), 122 South Michigan Avenue, Suite 1850, Chicago, Illinois 60603.

² This Memorandum is a companion document to the Controlled Choice Plan Memorandum of Understanding ("Controlled Choice Memorandum") executed by the Plaintiffs and District on September 16, 1997. The Controlled Choice Memorandum remains fully effective and complements the remedies addressed in this Memorandum. By way of background, the Plaintiffs amended their Office of Civil Rights complaint in October 1996 to allege systemwide discrimination in student assignment; within school segregation; tracking; discipline; and staff hiring and assignment. (For a more specific discussion of the background of this complaint, see Sections 2 through 7 of the Controlled Choice Memorandum which are hereby incorporated into this Equity Agreement.) Since the Plaintiffs amended their OCR Complaint, the parties have engaged in frequent and earnest discussions of these and other civil rights issues relating to education equity. The issues are listed in Attachment 1. (The phrase "facilities issues" in this Memorandum refers to issues 3 and 4 of Attachment 1, whereas the phrase "educational equity issues" refers to issues 5 through 15 of Attachment 1.)

analysis and, accordingly, agreed that the District's Equity Consultant, Dr. Robert Peterkin, would conduct an education equity audit. The District formally retained Dr. Peterkin for that purpose on August 11, 1997 ("Peterkin process").³

¹ The audit covers the issues raised in Dr. Peterkin's education audit framework submitted on July 28, 1997 (Attachment 2), the education equity issues identified in Attachment 1, Paragraphs 5 through 15, and related issues and concerns identified through the process described in this Memorandum. The parties further agree that data and the results of Dr. Peterkin's audit provide sufficient factual basis to conclude that the District's practices are a substantial cause of conditions which have a significant disparate impact on minority students in the areas identified in Attachment 1, Paragraphs 5 through 13, and that remedial action is necessary. Furthermore, the parties concur that some District practices either are not educationally justified or that there are alternative practices available which are of at least comparable educational soundness and which would not have the disparate impact caused by the present practices.

B. Dr. Peterkin will finish the audit in May 1998 and make initial policy recommendations by July 1998. In conjunction with District staff and representatives of the Plaintiff Class, Dr. Peterkin will review and finalize his initial policy recommendations by December, 1998; thereby leading to consideration and adoption of appropriate basic policy changes as soon as practicable thereafter. During the implementation of the policy recommendations, Dr. Peterkin, in conjunction with District staff and representatives of the Plaintiff Class, will continue to monitor and, when appropriate, revise policy initiatives.

C. More specifically, the Peterkin process will analyze not only quantitative data but the impact of existing District policies and procedures. It will develop potential policy changes based on the audit observations, and a potential education accountability process for student participation and performance.

2. Education Equity and Accountability Plan

³Dr. Daniel Levine may review and assist in the audit and subsequent steps.

A. The District agrees to carry out, in conjunction with Plaintiffs, a cooperative, concerted and collaborative remedial process to achieve educational equity for African American students. Likewise, the Plaintiffs are committed to such a process.

B. The parties agree that they will develop a clear process and a detailed and effective plan to achieve educational equity for African American students ("Education Equity and Accountability Plan" or "Plan") based on trust, consensus, collaboration and commitment. The Educational Equity Plan will be comprehensive and will include goals, compliance standards, programs, resources and monitoring systems. The Plan will address elimination of unwarranted disparities with respect to both the availability of educational services to minority⁴ students, and also the participation and performance of minority students in such services. The Plan will also be designed to achieve the other aspects of educational equity for African American students identified in Attachment 1, and to achieve systemwide and school-level staff diversity.

C. In spring of 1998, the Office of Civil Rights ("OCR") proposed a Resolution Agreement to the District that addresses both the proactive review initiated by OCR and the complaint filed with OCR by the Plaintiffs. The attorneys for the parties will discuss the draft OCR Resolution Agreement and its relationship to the development of the Education Equity and Accountability Plan. It is the parties' interest and intention that there be a single plan, which covers the education equity issues raised by the OCR review, Dr. Peterkin's Educational Equity Audit, and the Plaintiff Class.

⁴As used in this Memorandum, minority means African American. Multiracial students, the majority of whom are the children of bi-racial, African American and white couples, will be included in the definition of minority students. However, for purposes of reporting certain information to the State of Illinois, they are counted as white.

3. Implementation

A. The parties' Controlled Choice Memorandum established a Planning and Implementation Committee ("PIC" or "Committee") and a Task Force to accomplish the objectives contained in that Memorandum. The parties agree that PIC and the Task Force will have the same roles and responsibilities in developing and implementing the objectives of this Memorandum. See Paragraphs 12 and 15 of the Controlled Choice Memorandum. Further, the parties agree to discuss and consider adding to PIC or the Task Force certain individuals or community organizations that are not currently represented.

B. The parties' initial efforts will focus on the Peterkin process described in Section 2. PIC will review the nature and scope of that process, and may make recommendations concerning items to be addressed and the manner in which the information and recommendations are to be presented. The Committee will also address, at appropriate times, the information and recommendations emanating from that process. As Dr. Peterkin develops final data and the Plan (or major components thereof), he will present relevant information to members of the Committee, maintain ongoing discussion with the Committee concerning development of the Plan (or that component), and obtain the consensus concurrence of the Committee before presenting to the Board a final recommended version of the Plan (or that component).

C. For the duration of this Memorandum, the District will carry out the Plan, in conjunction with Plaintiffs, in a manner that will eliminate to the greatest practicable extent unwarranted disparities with respect to both the availability of education services to minority students and the participation and the performance of minority students in such services. The parties will continue to assess, refine and improve the Plan, the manner of implementation thereof, and the results thereof. The parties further agree that once the Plan is adopted, PIC will continue to function as a collaboration and oversight entity in the manner described herein. PIC will also continue to monitor, evaluate, refine and improve the Plan for its duration.

D. The Superintendent, with the advice and consent of the Plaintiff Class, will recommend to the Board the appointment of an employee at the Assistant Superintendent level with demonstrated expertise in the provisions of Title VI, school desegregation, and remedial educational initiatives or reassign, on a full-time basis, a current District employee with the necessary expertise, who will be responsible for coordinating and monitoring all aspects of the Plan. This employee will report directly to the Superintendent and will supervise both the educational and student assignment equity plans.

4. Participation of Plaintiffs and Other Persons, Organizations and Consultants

A. In order to facilitate the effective formulation and execution of this Memorandum, the parties will seek at appropriate times the participation of various community sectors in developing the Plan and making implementation of the Plan successful. This will include, for example, parent groups and the business and civic communities as well as other community associations and networks. In addition, the effective formulation and execution of this Memorandum Agreement will be enhanced by the active and meaningful participation of the members of the District's Board of Education, its Administration, the certified and classified staff and their respective unions, the Plaintiffs, both as a Class and with the assistance of their Legal Counsel,⁵ African American parents and students, and the community of Champaign.

B. The Parties agree that the use of consultants with expertise in developing and implementing the Plan will benefit the District and the Plaintiff Class by improving the quality of the Plan and developing community involvement. The parties have agreed on the consultants identified in Section 1 and the District, in conjunction with the Plaintiffs and PIC, shall jointly select

⁵In this regard, Plaintiffs' legal counsel possesses educational discrimination and desegregation experience, as well as experience in the implementation of other comprehensive equity plans designed to redress the constitutional and statutory rights of African American students.

any other consultants needed in the development or implementation of the Plan. The consultants' fees and expenses will be paid by the District.

5. Standards

The parties agree that the Plan will contain certain standards to determine when the District has achieved and maintained the elimination of unwarranted disparate education practices with respect to its African American students. Such standards will include, but not be limited to, the following:

A. A standard for participation of minority students in each of the regular programs, courses, classes and extracurricular activities.

B. With respect to attendance, grades, standardized achievement scores, alternative assessment scores, discipline rates, and dropout/graduation rates of minority students, standards for reasonably and practicably comparable educational outcomes for minority and majority students.

C. Standards for comprehensive, supplemental educational and social support to minority students as are needed to achieve and maintain the performance standards expressed in subparagraphs A and B.

D. Standards for the elimination to the greatest extent practicable of any over-representation of minority students in subjective special education categories. The District bears the burden of demonstrating that any such over-representation is clearly justified by the application and outcome of valid, nondiscriminatory special education assessment and placement practices.

E. The parties agree that discipline and school climate are inseparably related to, and reciprocally interact with, minority student participation and performance. The parties will develop remedial standards in these areas, including systemwide comprehensive multicultural initiatives and staff development programs regarding equitable discipline. Quantitative standards in this area will be recommended by such expert(s) and approved by the parties.

F. The parties agree that a substantial level of racial diversity among the District's certified and non-certified staff members is essential both to fully utilize African American employees in accordance with their availability in the Champaign labor market, and as a matter of both remediation and educational policy to provide the level of staff diversity needed to successfully change school climate and aid in closing the participation and performance gap between white and African American students. As required by the Illinois School Code (§5/10-20.7a), the Plan will provide policies and procedures for recruitment, hiring and retention of minority certificated and other staff for these purposes. The diversity goal for classified staff shall mean a minority representation at least equal to the proportion of African American persons qualified for jobs not requiring certification in the availability pool (one such measure is the proportion of African Americans in the total adult population of the District). The Plan will also establish staff hiring, assignment and transfer standards to achieve mutually agreeable levels of staff diversity systemwide and within individual schools across the District.

G. The Plan will address as appropriate the development of personnel evaluation provisions and other appropriate mechanisms to hold administrative and school-level staff members accountable for proper performance of equity responsibilities established under the Plan or through its implementation, subject to the District's obligations under Illinois law relating to affected labor groups.

H. The District, in conjunction with PIC, will review its policies and rules concerning, and a process for receiving and acting upon complaints of, racial or ethnic discrimination, harassment or inequity. This review will identify the necessity for additional policies, if any, including rules for District employees and students enforceable through discipline (up to discharge and expulsion, respectively).

6. District Authority

Nothing in this Memorandum shall supplant, diminish or abrogate the authority and powers of the District's Board of Education under Illinois law with

respect to the matters addressed in this Memorandum. Rather, this Memorandum constitutes an exercise of such powers.

7. Resources

A. The District will provide sufficient resources for the effective implementation of this Memorandum from existing funding sources, new sources and/or the Tort Immunity Fund.

B. Funding will be provided in part by altering how the District uses existing funding sources. In addition, supplemental funding will be sought. Because this Agreement represents the partial settlement of genuine threatened adverse litigation, the District will, if possible, obtain supplemental funding through the Tort Immunity Fund. The level of funding for both specific remedial initiatives and in the aggregate will be determined on the basis of remedial and programmatic needs and available resources, rather than arbitrary limitations.

C. An appropriate funding level will be determined each year as the parties continue to develop and refine the Plan's goals, compliance principles, programs, resources and monitoring systems. The level of funding necessary to implement the Plan and a detailed implementation budget will be recommended annually by the Superintendent and PIC to the Board. The District will consider PIC's recommendation(s) and seek PIC's concurrence before adopting major programs or resource commitments under the Plan.

8. Avoidance of Litigation

If the educational equity remedial measures continued in this Memorandum can be formulated and executed without the need for litigation, there are substantial advantages to the parties in terms of the speed and potential effectiveness of the remedies and there is a significant and valuable possibility that there will be greater community support for the Memorandum, which will in turn contribute to the effectiveness of the Memorandum.

9. Third Party Challenges

In the event that objections or challenges are raised by any third party: (a) to the lawfulness or appropriateness of this Memorandum or any provision within it, or (b) to any aspect of the implementation of this Memorandum, the District and Plaintiff Class shall jointly defend the lawfulness and appropriateness of the matter challenged. The District's counsel will take the lead role in doing so.

10. Enforcement

Specific components of this Memorandum shall be enforceable as between the District and Plaintiff Class by mediation and (if unsuccessful) by binding arbitration before a permanent arbitrator. The mediator and the permanent arbitrator will be mutually agreed upon by the Plaintiffs and the District. An arbitration award rendered under this Memorandum shall be judicially enforceable. It is the intention of this Memorandum that since the objectives and guidelines for the Equity Plan have been established by this Memorandum and because this Memorandum represents a collaborative consensus process, that there should be few occasions, if any, for disputes to reach the arbitration stage.

11. Duration

The duration of this Memorandum shall be the same as the Controlled Choice Memorandum, unless this Memorandum is mutually extended. During the term of this Memorandum, the Parties will periodically review the Plan to insure that the District's policies and practices remain effective and equitable for African American students, to determine whether the plan should be improved or tailored, and to coordinate the duration of the Plan.

12. Release

In consideration of the District's entry into and successful good-faith compliance with this Memorandum, Plaintiffs agree not to commence during the term of this Memorandum litigation for the purpose of obtaining remedies on

the educational equity issues which are governed by this Memorandum, and agree instead to devote their good-faith efforts to the success of the agreed remedial process delineated herein. This forbearance is without prejudice to the Plaintiffs' right to resort to such litigation if the parties are unable to agree on major and important elements of the overall educational equity remedial process and plan; or if the parties are prevented from successfully effectuating an agreed plan through external limitations such as lack of funding; or if the District fails to carry out this Memorandum successfully and in good faith.

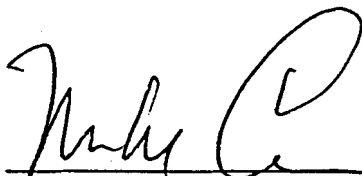
AGREED:

CHAMPAIGN COMMUNITY UNIT
SCHOOL DISTRICT No. 4.

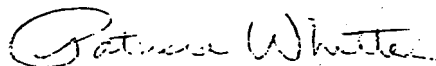
By:



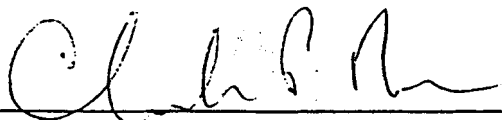
Don Nolen, Board President



Mike Cain, Superintendent



Patricia Whitten, Counsel



Charles Rose, Counsel

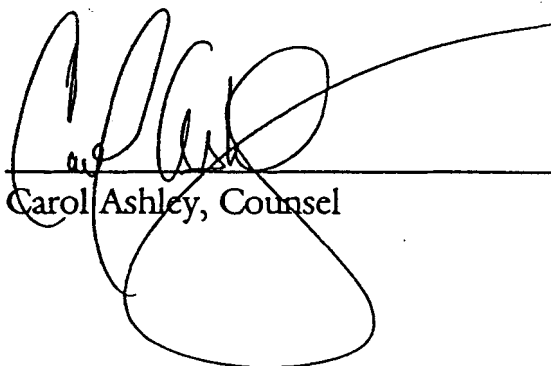
AGREED:

[NAMED PLAINTIFFS] as
representatives of the settlement class
of African American students, by
their attorneys

By:



Robert Howard, Counsel



Carol Ashley, Counsel

AGREED this 6th day of July, 1998.

ATTACHMENT 1

- Plaintiffs notified the District that they believed that civil rights of African American students are being violated by discriminatory practices including but not limited to the following:

1. racial identifiability of Columbia Elementary School;
2. the disproportionate mandatory transportation burdens placed on African American students to achieve desegregation in other District schools;
3. the "structural displacement" of students who reside in the predominately African American area in north Champaign, caused by insufficient building capacity that area;
4. disparities in the quality of facilities and equipment provided to minority students or in minority neighborhoods;
5. disparate under-participation of minority students in various upper-level course and program offerings of the District, such as Advanced, Honors, Gifted and higher-level vocational courses;
6. disparately low participation of minority students in regular college-preparatory courses, and disparately high participation of minority students in non-college-prep courses and in "behavior-based" course assignments and programs such as the CARE alternative high school program;
7. over-identification of and over-placement of minority students into subjective special education categories;
8. given whatever level of minority enrollment exists in various courses and programs, racially identifiable distribution of those students among the individual classrooms and sections of that course or program;

9. discriminatory discipline practices and outcomes and a school climate disadvantageous to minority students;
10. disparate low performance of minority students in terms of achievement, grades, attendance, and dropout/graduation rates;
11. inadequate availability of educational services and resources to minority students;
12. disparate low participation of minority students in extracurricular activities;
13. the lack of instructional methods and curricular offerings which address multicultural education needs;
14. disproportionate under-representation of minorities in the District's certified staff, both systemwide and within each school and program, including both administrative and teaching positions; and
15. disproportionate under-representation of minorities in the District's classified staff, both systemwide and within each school and program.

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